80-982

Supreme Court, U. S.
FILED
DEC 4 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

December Term, 1980

No.

WILLIAM S. KARN, Petitioner

vs.

THE MAGNAVOX COMPANY, and
NORTH AMERICAN PHILIPS CORP.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF DELAWARE

Of Counsel:

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Petitioner
attorney pro se

QUESTIONS PRESENTED

The petitioner was a minority shareowner in The Magnavox Company which company was incorporated in the state of Delaware. The petitioner was frozen out of his ownership by a series of steps that included a class action civil action in the court system of Delaware. There was no competitive bidding for ownership of The Magnavox Company in its court forced sale to North American Philips Corporation. In the Delaware court proceeding the petitioner made timely objection claiming that the Delaware court did not have subject matter jurisdiction since the forced sale without competitive bidding constituted a violation of the Sherman Act antitrust laws. The Supreme

Court of the State of Delaware has refused to review whether its state court system has subject matter jurisdiction, which objection of subject matter jurisdiction can be raised at any time per their court rules (same as Federal Rules of Civil Procedure). Instead the Supreme Court of the State of Delaware has claimed a procedural deficiency by the petitioner, claiming that the petitioner's appeal from the issue of subject matter jurisdiction could only be filed after entry of the lower state court order disposing of the class action settlement. On this procedural ground the petitioner's appeal of the lower court's ruling on subject matter jurisdiction was dismissed. The questions presented for review are:

1. Does the Delaware state court system lack subject matter jurisdiction in presuming to dispose of minority ownership

of The Magnavox Company, the lack of jurisdiction arising from violation of the Sherman Act (Title 15 U.S.C. section 1 antitrust law) being a violation thereof in that the settlement ignored liability for threefold damages stemming from a freezeout sale without competitive bidding?

2. Does the Delaware state court system lack subject matter jurisdiction in ruling upon petitioner's challenge of the disposition of the petitioner's minority ownership of The Magnavox Company, disposition being allegedly in violation of the Sherman Act, jurisdiction lacking because jurisdiction is as stated by the U.S. Constitution article III, section 2.1 which portion of the Constitution reads that the U.S. Supreme Court judicial power shall extend to controversies between a state and citizens of another state?

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IN THE
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December Term, 1980

WILLIAM S. KARN, Petitioner,

vs.

THE MAGNAVOX COMPANY, and
NORTH AMERICAN PHILIPS CORPORATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF DELAWARE

Petitioner William S. Karn respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Delaware entered in this proceeding on October 23, 1980.

COURT ORDER BELOW

The order of the Supreme Court of the State of Delaware appears in the

Appendix hereto at pages A1 - A2.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. ø 1254(1).

QUESTIONS PRESENTED

The petitioner was a minority shareowner in The Magnavox Company which company was incorporated in the state of Delaware. The petitioner was frozen out of his ownership by a series of steps that included a class action civil action in the court system of Delaware. There was no competitive bidding for ownership of The Magnavox Company in its court forced sale to North American Philips Corporation. In the Delaware court proceeding the petitioner made timely objection claiming that the Delaware court did not have subject matter jurisdiction since the forced sale without competitive bidding constituted a violation of the Sherman Act antitrust laws. The Supreme

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STATEMENT OF THE CASE

Petitioner herein, Delaware state court appellant below, Karn was designated as a member of the minority shareowner class in a class action suit of title Singer vs. Magnavox. Minority shareowner Karn showed up at the Delaware Court of Chancery hearing wherein the proposed final settlement of the class action by the minority shareowner Singer was presented to the court. Karn's complaint was that there was a forced sell-out without competitive bidding. The sale was forced under color of law with state court approved procedure. The procedure was in fact a violation of the Sherman Act as stated by title 15 U.S. Code section 1. The Magnavox case came on for proposed final settlement hearing before the Court of Chancery of the State of Delaware in and for New Castle County on July 31, 1980. Petitioner herein Karn

appeared at that hearing and in writing with due formality moved for dismissal of the state court action. The reason given in support of the motion was that the settlement was part of an antitrust violation. Opposition counsel has quoted a statement by Mr. Justice White to the effect that corporations are creatures of state law; and said counsel assumes that that is dispositive of the controversy in favor of his client. Petitioner Karn believes that the incorporation business service run by the state of Delaware which issues and administers corporate charters is also a creature of state law. Such a state agency is subject to all the appropriate federal laws including the Sherman Act antitrust laws. Even if we assume that a state may reasonably determine the rules of conveyance of all real property that stands behind a corporate charter that reasonableness

stops short of allowing a forced sale without competitive bidding. A forced sale without competitive bidding is precisely in the spirit of the practice proscribed by the Sherman Act antitrust laws.

The correction of this freezeout abuse requires no radical change of government. States may continue to issue and administer corporate charters. However, instead of allowing a freezeout merger, the majority ownership desiring to effect a merger should be obliged to announce to all the world that any qualified bidder may bid for total ownership of the company. If a bid is received that is higher than that offered by the majority ownership then they too should be obliged to tender their shares and be obliged to accept the highest bid for the benefit of all owners including the minority owners. Such a procedure has been followed in the past

in various spectacular takeover battles. When a state allows a corporate freezeout without invitation for bids for entire ownership of the corporation by any qualified bidder then the state is acting as a party to a violation of the federal antitrust laws.

Moreover the petitioner Karn was similarly delt with in a summary manner by the Delaware Court of Chancery and the Delaware Supreme Court when Karn objected to his being frozen out of his ownership in Filtrol Corporation last year. These Delaware courts turn a deaf ear to Karn's cries of an antitrust law violation in the freezeout procedure. In the case of Filtrol Corporation the Delaware Supreme Court said Karn was too late in raising objections of antitrust law violation. In the case of Magnavox the Delaware Supreme Court said Karn was too early in filing his appeal that there is lack of

state court jurisdiction because of antitrust law violation. At this point we have a controversy between a state and a citizen of another state over the issue as to whether there is an antitrust law violation in the state practice of allowing a freezeout without competitive bidding. Per the U.S. Constitution such a controversy shall be reached by the judicial power of the U.S. Supreme Court.

The counsel opposing Karn in the Delaware court action submitted to the Supreme Court of the State of Delaware a motion for dismissal of Karn's appeal. On this motion arguments were heard on October 14, 1980 before the Delaware Supreme Court before C.J. Herrmann and JJ. Quillen and Horsey. It was Karn's contention that the Delaware state court system lacked subject matter jurisdiction because of the antitrust law violation. It was Karn's belief that only by reach-

ing the merits of that issue could the Delaware Supreme Court make any appropriate ruling upon a motion to dismiss Karn's appeal. What happened in fact at the hearing was that C.J. Herrmann cut short any comment by Karn that the Delaware court was improperly sitting in judgment of its own case in view of its vested interest in the incorporation tax revenues. Instead that court insisted in confining the arguments to the narrow procedural issue as to whether Karn's appeal had been filed too soon, i.e. before the Court of Chancery had issued its written approval of the class action settlement, which written approval did not issue until several weeks after the hearing.

One cannot tell with certainty either by foresight or hindsight as to what constitutes a fair market price of a corporation. Fairness is not the issue.

Free competition is the issue. Any restraint of trade in arriving at the sale of common stock corporate ownership must offend the American tradition of free competition which the Sherman Act seeks to uphold.

The following cases have been considered by several parties as being pertinent to the present controversy:

Cort vs. Ash, 422 U.S. 66 (1975)

Santa Fe Industries, Inc. vs. Green, 430 U.S. 462 (1977)

Shaffer vs. Heitner, 433 U.S. 186 (1977)

REASONS FOR GRANTING THE WRIT

A. The Decisions Below Undermine and Thwart Important Public Policies in the Administration and Enforcement of the Sherman Act As Stated in Title 15 U.S.C. Section 1.

(1) The Decision Below Continues to Allow Freezeout Forced Sales of Minority Stockownership in Violation of the Sherman Act.

This freezeout procedure is essentially the same as that which the petitioner experienced in his Filtrol Corporation stock ownership. The procedure is routine under Delaware corporate law and Delaware court practice. In the freezeouts there no opportunity offered by the court for competitive bidding. Yet the solution is simple enough. The court need only announce that the company is up for sale to the highest bidder, the high bidder taking all, not only the

minority share ownership but the block of stock assembled by the raiding company. An upset price may be set by the court. That way the raider will bid its best price, the minority may organize its own buy out bid, and prospective outside buyers will force the price to the level of optimum evaluation of the company's commercial worth.

(2) The Decision Below Permits Operation of an Essentially Private Business Service in Issuing and Administering Incorporation Charters That Is Immune to Antitrust Laws and State Boundary Limitations of State Sovereignty.

The issuing and administering charters of incorporation is in many respects simply a business service that could run without connection with a state government. By being merged with the machinery of a state government the business service aspects of administering corporate

charters have assumed a cloak of immunity to federal antitrust laws; and simultaneously under the common laws governing business contracts the operations have extended across state boundaries without respecting the sovereignty of other states.

B. The Action of a State Court of Sitting in Judgment of an Antitrust Law Violation by an Agency of That State Exceeds the Jurisdiction of That State Court.

It is understandable that the courts of Delaware refuse to consider whether freezeouts under their very profitable incorporation system is in violation of the federal antitrust laws. Not only is a vested revenue interest threatened but the charge itself, if accepted as a prima facie case, removes the hearing from the state court jurisdiction.

C. Application of Federal Antitrust Laws to the State Business of Administering Corporate Charters Is Necessary to Prevent a Disasterous "Race to the Bottom" Competition among States Offering the Most Liberal Corporation Laws.

(1) States Compete for the Profitable Business of Incorporating Private Businesses.

(2) The Competition Is In the Form of Increasingly Liberal Laws That Favor Management at the Expense of Minority Ownership Investment.

The state legislatures and court systems are sensitive to the revenue generating source available in issuing corporate charters. Generally the corporations operate nationwide and have no greater tie in by commercial reasons with the state issuing the charter than with the other 49 states. Indeed the home office and manufacturing facilities are

more often in the more industralized part of the nation or in the several major financial centers of the nation. Since the businesses which are in question (The Magnavox Company here) are interstate in nature there should be a uniform responsibility to obey federal laws including federal antitrust laws. Yet one state seeks to gain in incorporation attractiveness over another state by allowing such federal law violations under color of administering constitutionally proper state laws. When anyone's interest is to be compromised it is the silent scattered small stockowner that will be sacrificed to the raiding corporate management class.

The solution is simple and not radical and is simply to insist upon uniform application of appropriate federal laws including federal antitrust laws by all courts.

CONCLUSION

The respondents thru the Delaware court system have frozen out the petitioner's ownership interest in The Magnavox Company without competitive bidding and hence in violation of the Sherman Act. The Delaware State Supreme Court has refused to rule on whether the Delaware state court system has subject matter jurisdiction over such an antitrust law violation. Instead it rejected the petitioner's appeal of the lower court ruling on subject matter jurisdiction by claiming that the appeal was filed too early, before the lower court had issued a written order relating to the terms of the class action settlement. The petitioner now seeks a ruling that there has been an antitrust law violation and that that fact removes the case from Delaware state court jurisdiction.

For the foregoing reasons it is respectfully submitted that this Honorable Court should issue a writ of certiorari to review the judgment of the Supreme Court of the State of Delaware.

Respectfully submitted,

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attorney pro se)
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Pennsylvania 15202

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or (412) 931-2983

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December 1980 three copies of this Petition for a Writ of Certiorari were served by first class mail postage prepaid on the attorneys for respondents The Magnavox Company and North American Philips Corporation.

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(shareowner and acting attorney pro se)

IN THE SUPREME COURT OF THE STATE

OF DELAWARE

No. 193,1980

WILLIAM S. KARN,

Plaintiff Below, Appellant,

vs.

THE MAGNAVOX COMPANY, et al.

Defendants Below, Appellees.

Submitted: October 14, 1980
Decided: October 23, 1980

Before HERRMANN, Chief Justice, and

QUILLEN and HORSEY, Justices

ORDER

This 23rd day of October, 1980,

Upon due consideration of the Motion of plaintiffs below for a Rule to Show Cause Why This Appeal Should Not Be Dismissed, and of the Answer thereto filed by William S. Karn, and the oral arguments presented in connection therewith,

It appearing to the Court that this appeal was filed prematurely and in violation of the Rules of this Court in that it was not processed as an appeal from any Interlocutory Order of the Court of Chancery and it was filed before any Final Order of the Court of Chancery was entered,

NOW, THEREFORE, IT IS ORDERED That this appeal be and it is hereby DISMISSED.

BY THE COURT:

/s/ D. L. Herrmann

Chief Justice

No. 80-982

IN THE

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October Term, 1980

WILLIAM S. KARN,

Petitioner,

v.

THE MAGNAVOX COMPANY and
NORTH AMERICAN PHILIPS CORP.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Delaware.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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Respondents.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

REASONS FOR DENYING THE WRIT.

This petition seeks review of an Order of the Supreme Court of Delaware (A 1-2) which dismissed an appeal for failure of the appellant to have compiled with the applicable statutes and court rules of Delaware in perfecting said appeal. The petition thus presents no constitutional or federal statutory questions nor does the case involve any of the other reasons for allowing a writ as set forth in Supreme Court Rule 17. The petition should be denied.

Moreover, the underlying claim is patently without merit. In July, 1975, The Magnavox Company, a Delaware corporation, merged under applicable Delaware statutes with a wholly-owned subsidiary of North American Philips Development Company, also a Delaware

corporation, its 85% stockholder. A class action challenging the merger on behalf of Magnavox minority stockholders was filed in the Court of Chancery for New Castle County, Delaware, *Singer v. The Magnavox Company, et al.,* Civil Action No. 4929. The complaint alleged breaches of common law fiduciary duties and state statutes. After the Supreme Court of Delaware ruled that a valid claim for breach of fiduciary duty was alleged under state law (*Singer v. The Magnavox Company,* 380 A. 2d 969, (Del. Supr. 1977)), plaintiffs engaged in extensive discovery, leading ultimately to negotiations which resulted in a proposed settlement. A class consisting of all Magnavox minority stockholders at the time of the merger was certified as the plaintiff class, and a Notice of Pendency of Class Action and Proposed Settlement and Hearing Thereon (B 1-4) was mailed to all prospective class members, including petitioner Karn.

Pursuant to Chancery Court Rule 23, which is in substance identical to Rule 23 of the Federal Rules of Civil Procedure, each prospective class member, including Karn, was granted the opportunity to exclude himself from the prospective class in order to pursue any individual remedy which might be available. Karn did not so elect. Instead he moved to intervene and filed a motion to dismiss the entire action for lack of jurisdiction. At the hearing on the settlement, Karn was given full opportunity to present arguments. Vice Chancellor Grover C. Brown stated that, while he doubted Karn's standing as intervenor to file such a motion, he rejected it on its merits as well. The settlement was subsequently approved and distribution of the cash proceeds of the settlement to class members undertaken.

Karn subsequently attempted to appeal from the Vice Chancellor's ruling, but, as reflected in the Order as to

which certiorari is sought, he failed to meet basic procedural requirements.*

In *Green v. Santa Fe Industries, Inc.*, 430 U. S. 462 (1977), this Court expressly recognized that corporate activity of the type here challenged has been traditionally left to state regulation and that the role of the federal judiciary in corporate governance is limited. See also *Cort v. Ash*, 422 U. S. 66, 84 (1975). This case represents a casebook application of these principles, and petitioner's efforts to create federal anti-trust and other issues out of this settlement presents an essentially frivolous challenge to well-established law.

The petition should be denied.

Respectfully submitted,

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American International Bldg.
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Attorneys for Respondents
The Magnavox Company and
North American Philips Corp.

December 29, 1980

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* Among Karn's other deficiencies was his failure to give notice of his appeal to the class action plaintiffs, who are, in fact, the parties who would be adversely affected by the granting of relief to Karn. This failure has apparently recurred in this Court.

APPENDIX.

Extracts From Notice of Pendency of Class Action and Proposed Settlement and Hearing Thereon.

To: All persons who were Stockholders of record of The Magnavox Company on July 24, 1975, immediately preceding its merger with a subsidiary of North American Philips Development Corporation ("NAPDC"), excluding NAPDC and those persons subject to an appraisal action now pending in this court with respect to said merger.

CLASS DETERMINATION

1. (a) Notice is hereby given pursuant to an Order of the Honorable Grover C. Brown, Vice Chancellor of the State of Delaware, entered May 29, 1980, to all persons who were stockholders of record of The Magnavox Company ("Magnavox" or "the Company") on July 24, 1975, immediately preceding its merger with a wholly owned subsidiary of North American Philips Development Corporation ("NAPDC") as hereinafter described (see paragraph 2 below) ("the Merger") that the above-entitled action has been determined to be a class action, on behalf of a class consisting of all those persons who were stockholders of the Company on July 24, 1975, immediately preceding the Merger, excluding NAPDC and those persons subject to the appraisal action now pending with respect to the Merger. If you are such a person, you are a member of the Class and your rights in connection with the subject matter of this action will be determined by this action, unless you notify the Court in writing before July 21, 1980 that you elect not to remain in the Class (see paragraph 4 below).

DESCRIPTION AND HISTORY OF THE LITIGATION

2. This action ("the Chancery action") was commenced by Louis and Mollie Singer, Plaintiffs, on November 11, 1975 on behalf of all persons other than NAPDC who had been stockholders of the Company immediately prior to the Merger. The gravamen of the Complaint was that North American Philips Corporation ("NAPC") and NAPDC, as the controlling stockholders of the Company, and the Magnavox board of directors had, in effectuating the Merger, violated the common law fiduciary duty owed by them to the minority stockholders of Magnavox; and the provisions of the Delaware "Blue Sky" law (6 DEL. C. CH. 73) in connection with the notice of stockholders' meeting convened to consider the Merger. Named as defendants were Magnavox, NAPC, NAPDC and those individuals who had been directors of Magnavox at the time of the merger. The relief sought in said action was rescission of the merger or, alternatively, the payment of damages to the members of the Class, or other appropriate relief.

* * *

On October 29, 1976 the Chancery action was dismissed by order of Vice Chancellor Grover C. Brown for failure to state claims upon which relief could be granted. Upon appeal, however, said order was by opinion dated September 23, 1977 in part reversed by the Delaware Supreme Court, and the complaint reinstated insofar as it alleged that defendants had violated their fiduciary duty in effecting a merger for no purpose other than to eliminate the Magnavox minority stockholders. The dismissal of the allegations of violation of the Delaware "Blue Sky" law was affirmed. Upon remand plaintiffs filed, on Octo-

ber 25, 1977, an amended complaint alleging, in addition to the aforementioned breaches of fiduciary duty in the effectuation of the merger, a claim that defendants had breached their fiduciary duty of "complete candor" in the disclosures to the Magnavox minority stockholders in connection with the shareholders meeting convened to consider the merger. An answer denying all of the material allegations of the amended complaint was filed November 30, 1977.

By Opinion dated December 14, 1978, Vice Chancellor Grover C. Brown granted plaintiffs' motion for class action certification pursuant to Chancery Court Rule 23(b)(3), designating as the appropriate beneficiary class all persons who had been stockholders of Magnavox other than NAPDC, on July 24, 1975 immediately prior to the merger. Defendants on December 21, 1978 filed a motion for reargument insofar as said opinion designated as members of the beneficiary class those minority stockholders of Magnavox who had voted in favor of the merger or who had acquired Magnavox stock subsequent to the April 30, 1975 announcement of the merger. Said motion for reargument was pending before the Court when the proposed settlement was reached.

° ° °

PROPOSED SETTLEMENT AND HEARING

3. Counsel to the parties have entered into a Stipulation of Settlement, dated May 22, 1980 ("the Stipulation"). A hearing will be held on July 31, 1980 before the Honorable Grover C. Brown, Vice Chancellor, in the Court of Chancery, Public Building, 11th and King Streets, Wilmington, Delaware 19801 at 11 A.M. to determine whether the proposed settlement of this action should

be approved as fair, reasonable and adequate and in the best interests of the members of the Class (see paragraph 5 below) and, in the event the Court approves the Stipulation, to pass upon plaintiff's attorneys' application for allowance of fees and expenses . . . .

INSTRUCTIONS TO CLASS MEMBERS

4. If you exclude yourself from the Class, you will not share in or be subject to the proposed settlement or to any judgment in this action. You may request to be excluded from the Class by mailing a signed request for exclusion from the Class, stating your name and residence address, the number of shares of the Company you owned on July 24, 1975, immediately preceding the Merger, and the name and address (if different from your own) in which your securities were held of record, postmarked no later than July 21, 1980 to:

David A. Drexler, Esquire
Morris, Nichols, Arsht & Tunnell
P. O. Box 1347
Wilmington, DE 19899

° ° °

5. The following is a brief summary of the terms of the proposed settlement; for its complete terms and provisions please refer to the Stipulation on file with the other documents in this case:

A. Settlement Amount and Allocation

As consideration for the settlement defendant NAPDC on behalf of itself and on behalf of all defendants shall

pay a total of Nine Hundred Sixty Thousand Dollars ($960,000.00) (being an amount equal to approximately $.34 per share for each share held by members of the beneficiary class), less $.34 for every share of Magnavox stock owned by class members who request exclusion from the class in accordance with procedures set forth at paragraph 4 hereof (the "Settlement Fund"). If requests for exclusion aggregate more than 25% of the total class shares, defendants may elect to terminate the settlement and the litigation will proceed towards trial.

* * *

PROCEDURE FOR SERVING AND FILING OBJECTIONS, IF ANY

10. At the Hearing, any member of Class who desires to do so may appear personally or by counsel, providing an appearance is filed and served as hereinafter provided, and show cause, if any he has, why the Stipulation should not be approved as fair, reasonable and adequate and a judgment entered dismissing on the merits and with prejudice the claims asserted by the plaintiff and the Class against all defendants and, further, granting an allowance of fees and expenses to Class counsel for their services herein and expenses incurred, provided, however, no member of the Class or any person shall be heard or entitled to contest the approval of the terms and conditions of this settlement, and if approved, the judgment entered thereon, and the allowance of fees and expenses to the Class counsel, and no papers or briefs submitted by any member of the Class or any person shall be received and considered except by Order of the Court for good cause shown, unless, on or before July 21, 1980 said person

has served written objections and copies of any other papers and briefs upon

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Attorney for defendants

and

James L. Holzman, Esquire
Prickett, Jones, Elliott & Kristol
P. O. Box 1328
Wilmington, DE 19899
Class counsel

and filed the objections, papers and briefs with the Register in Chancery, Public Building, 11th and King Streets, Wilmington, Delaware, 19801.

* * *

Dated: June 18, 1980

/s/ JOHN D. KELLY, III
John D. Kelly, III
Register in Chancery